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Eshwari P. Komarla

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EXAMINER

CHU, GABRIEL L

ART UNIT

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. **Claims 1-5, 7-12, 14 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6622260 to Marisetty et al. in view of US 6971044 to Geng et al. See previous rejection.**
3. **Claims 6, 13 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6622260 to Marisetty et al. in view of US 6971044 to Geng et al. as applied to claim 1, 8 above, and further in view of US 20040054780 to Romero. See previous rejection.**
4. **Claims 15-28 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6622260 to Marisetty et al. in view of US 6971044 to Geng et al. and US 20040054780 to Romero. See previous rejection.**
5. **Claims 1-5, 7-12, 14 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6675324 to Marisetty et al. in view of US 6971044 to Geng et al. See previous rejection.**
6. **Claims 6, 13 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6675324 to Marisetty et al. in view of US 6971044 to Geng et al. as applied to claim 1, 8 above, and further in view of US 20040054780 to Romero. See previous rejection.**

7. **Claims 15-28 rejected under 35 U.S.C. 103(a) as being unpatentable over US 6675324 to Marisetty et al. in view of US 6971044 to Geng et al. and US 20040054780 to Romero.** See previous rejection.

Response to Arguments

8. Applicant's arguments filed 28 April 2008 have been fully considered but they are not persuasive.

9. Applicant argues (page 8) that Geng does not teach “determining” whether there is a peer node with an available NIC, but rather it defaults to the remaining control node. First of all, you cannot (successfully) fail over to something that is not there. Secondly, “determining” by what? How? Thirdly, Applicant makes no claim as to a negative determination. As such, in view of Applicant's interpretation, Geng may merely be interpreted as always “determining” the default.

10. Applicant argues (page 8-9) that in Geng, “the MAC address of the first node is failing over to the second control node... is not the same as sending the MAC address to the peer node and disabling the MAC address of the local node.” Geng, by “enabling” the second node with the MAC address of the first has transferred that MAC address to that node. Whether Geng, actively or by some specific element, disables the first node is not claimed. However, it is disability inherent as the first is failed and there by “disabled”. Applicant does not claim how or by what it must be “disabled”, or how or by what the MAC address is “sent”.

11. Applicant argues (page 9) that Geng does not enable the recovered control node with the MAC address, however admitting that Geng does disclose recovery of a failed

node with the MAC address. Here again, Applicant reads more into a term, in this case “enable”, than is broadly reasonable. Applicant admits that the failed node is resumed, with the MAC address no less, but that this somehow is not “enabling” the MAC address on that node. Applicant does not claim how or by what the MAC address must be enabled.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel L. Chu whose telephone number is (571) 272-3656. The examiner can normally be reached on weekdays between 8:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gabriel L. Chu/
Primary Examiner
Art Unit 2114

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